U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

02 JUL 2002

File: [redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a minister at an annual salary of "between $20,000 and $25,000."

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding filing of the petition and failed to establish that he was qualified as a minister as defined in this visa petition proceeding.

On appeal, an official of the petitioning church submitted additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), that pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

[redacted]

The petitioner in this matter is a church affiliated with the Assemblies of God denomination. It was stated that the church has a congregation of 650 members and currently has six pastors. The beneficiary is a native and citizen of Mexico who was last admitted to the United States on November 16, 1998, as a B-1 visitor, with an authorized stay until November 20, 1998. The record therefore reflects that the beneficiary remained beyond his authorized stay and has resided in the United States in an unlawful status since such time.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that the beneficiary is qualified as a minister as defined in these proceedings.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

On appeal, the petitioner submitted a letter from [redacted] Superintendent of the [redacted] of the Assemblies of God dated January 11, 2001. [redacted] stated, in part, "We need the skills and knowledge of [the beneficiary], who completed the courses required to become a minister."

On review, the evidence of record is insufficient to establish that the beneficiary is a qualified minister of the Assemblies of God. First, the petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards.

Second, the petitioner did not provide a letter from an authorized official of the denomination verifying the denomination's recognition of his credentials. The statement from [redacted] does not state that the beneficiary is ordained or that he is recognized as a minister in the denomination. As stated in the regulation, a lay preacher is not considered a minister for the purpose of special immigrant classification as a minister pursuant to section 101(a)(27)(C)(ii)(I) of the Act.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on August 3, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least August 3, 1998.

The letter from [redacted] submitted on appeal further stated, [The beneficiary] came to the area at the end of 1998 and since then, he has been involved in voluntary work to the church and community to the present."

On review, the record does not establish that the beneficiary has been solely and continuously carrying on the vocation of a minister since at least August 3, 1998. First, as discussed above, the petitioner has not established that the beneficiary is an ordained minister.

Second, the petitioner provided no indication of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax records, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

Finally, the petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the small new church.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or

[redacted]

> remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not shown that the alien would be solely carrying on the vocation of a minister on approval of the visa petition. Therefore, it has not tendered a qualifying job offer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.